

Remarks

Claims 1-29 are currently pending in this application. By this Amendment, claims 13 and 22 are canceled, claims 9, 11, 14, 18-20, and 23 have been withdrawn by the Examiner, and claims 2, 6, 12, and 21 have been amended. Applicant notes that the Examiner has indicated that claims 2-5 have allowable subject matter and as no specific grounds of rejection have been provided for claim 25 below, Applicant assumes that the claim was rejected as depending from a rejected independent claim.

Reconsideration of the merits of the application is respectfully requested in light of the amendments made above and the remarks that follow.

35 U.S.C. § 101 Rejection of Claims

The Examiner rejected claims 12, 13, and 15-17 under 35 U.S.C. §101 because the claimed invention included a “cannula inserted into an abdominal cavity”. Claim 12 has been amended to clarify that the claimed invention relates to a system that includes a cannula adapted to be inserted into an abdominal cavity. Applicant respectfully requests reconsideration of this ground of rejection in light of the amendments.

35 U.S.C. § 112 Rejection of Claims

The Examiner rejected claim 6 under 35 U.S.C. §112, second paragraph, as lacking antecedent basis for the limitation “the comparison.” Claim 6 has been amended to depend from claim 2 instead of claim 1 and claim 2 refers to “a comparison”. Applicant respectfully requests reconsideration of this ground of rejection in light of the amendments.

35 U.S.C. § 102 Rejection of Claims

The Examiner rejected claims 1, 7, 8, 10, 26 and 27 under 35 U.S.C. § 102(e) as being anticipated by Edwards et al., U.S. Patent Publ. No. 2003/0153905. Applicants respectfully disagree and request reconsideration in light of the following remarks.

The Examiner takes the position that in paragraph [268] Edwards et al. disclose a method for treating obesity that comprises ablating tissue on an exterior surface of a

stomach of a patient. Applicant assumes that the language in paragraph [268] on which the Examiner is relying reads: “while the exemplary embodiments have been particularly described for the ablation through the interior surface of a hollow organ HO, such as a stomach ST, the structures and processes are readily adapted for ablation through the exterior surface of a hollow organ HO, such as a stomach ST.” Applicant respectfully submits that Edwards et al. do not disclose ablating the exterior surface of the stomach” rather that they disclose inserting the ablation system through the exterior surface. Thus, Edwards et al. do not disclose a limitation of each of claims 1, 7, 8, 10, 26 and 27 and thus can not anticipate. Accordingly, Applicant respectfully requests that the rejection of these claims under 102(e) with respect to Edwards et al. be withdrawn.

The Examiner rejected claims 12, 15, 16, 17, 21, 24, 28, and 29 under 35 U.S.C. § 102(e) as being anticipated by Chin et al. (US 6,802,840). Applicants request reconsideration in light of the amendments to the claims and the following remarks.

Independent claim 1 has been amended to include the sensor element of dependent claim 13 and independent claim 13 has been amended to include the monitoring means of claim 22. Chin et al. do not disclose of a sensor to monitor digestion rate or means for monitoring the gastric myoelectric activity in the stomach of the patient.

With respect to claim 24, Chin et al. do not disclose a method of monitoring gastric activity of the stomach or assessing the impact of ablation upon one of gastroparesis, nausea and gastroesophageal reflux disease.

35 U.S.C. § 103 Rejection of the Claims

The Examiner rejected claim 6 under 35 U.S.C. §103(a) as being unpatentable over Edwards et al. '905 further in view of Chen et al. (US 6826428). Claim 6 has been amended to depend from claim 2 as it refers to a comparison. The Examiner has indicated that claim 2 would be allowable. Applicant respectfully requests reconsideration of this rejection in light of the foregoing.

The Examiner rejected claims 13 and 22, (now amended claims 12 and 21, respectively) under 35 U.S.C. 103(a) as being unpatentable over Chin et al. '840 in view of Chen et al. (US 6826428). Applicant disagrees and requests reconsideration.

The Examiner takes the position that Chin et al. teach all of the limitations of the claim except a sensor or means to monitor digestion rate and that it would have been obvious to one of ordinary skill in the art to determine whether the ablation has slowed a peristaltic wave during the method taught by Chin et al. to determine if the treatment is effective as disclosed by Chen et al. Applicant respectfully disagrees. The ablation system and method disclosed by Chin et al. was to facilitate positioning and guidance of the ablation probe to a desired site in the body and do not suggest that the ablation of tissue will have an effect on the myoelectric activity of the stomach or any other tissue. Furthermore, Chin et al. do not disclose an ablation source to control delivery of ablation energy in an amount sufficient to ablate tissue from the exterior surface of the stomach and alter gastric myoelectric activity and neither do Chen et al. Moreover, Chen et al. disclose a method of treating obesity by electrical stimulation of the stomach where the stimulation occurs on an ongoing basis and the treated tissue is not destroyed as it would be by ablation. Nothing in either of these references suggests that it would be useful to use the monitoring of digestive rate or the myoelectric activity of the stomach to determine the effectiveness of an ablation treatment.

In view of the foregoing remarks, it is believed that the application is now in condition for allowance and notice of this, in the form of a notice of allowance is respectfully requested.

The Examiner is respectfully requested to contact the undersigned by telephone at 763.505.0003 or by E-mail at mary.p.bauman@medtronic.com with any questions or comments.

Respectfully submitted,

Date: August 7, 2006

By: /Mary P. Bauman/
Mary P. Bauman
MEDTRONIC, INC.
710 Medtronic Parkway NE,
M.S.: LC340
Minneapolis, Minnesota 55432-5604
Telephone: (763) 505-0003
Facsimile: (763) 505-0411
CUSTOMER NO.: 27581